Petitioners

E/S Fieldgreen Road, 420' NE ZONING COMMISSIONER of the c/l of Fieldchat Road \* OF BALTIMORE COUNTY 5th Councilmanic District \* Case No. 90-91-A William S. Gahs, et ux

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request variances to permit an existing open projection (deck) with a rear yard setback of 6 feet in lieu of the required 15 feet, and to amend the "ourth Amended Final Development Plan of Brookhurst, Block B, Lot 24, i, allow said deck to be constructed outside the building envelope, as more particularly described in Petitioner's

The Petitioners appeared and testified. Appearing as Protestants in the matter were: Joseph DiPietro and Donald Lounsbury.

Testimony indicated that the subject property, known as 4404 Fieldgreen Road, consists of a single family dwelling. Petitioners recently constructed a deck on the rear portion of the dwelling without benefit of a building permit. The deck has been constructed within the rear yard setback requirements. Upon receipt of a complaint from an adjoining property owner, a stop work order was issued by the Department of Permits and Licenses pending application for the appropriate building permits. Petitioners testified to deny the relief requested would result in undue hardship or practical difficulty upon them as the deck has since been completed. Petitioners submitted photographs of other homes in the development depicting the close proximity of the homes in general and the fact that other decks of simila size exist in the community.

The Protestants reside on Fieldchat Road and the rear of their properties abut Petitioners' property at the rear. The Protestants are generally opposed to the requested variance in view of the fact that the deck is approximately 6 feet from the rear property line. Further, the Protestants noted the fact that Petitioners continued construction of the deck after the issuance of the stop work order. The Protestants believe that to grant the variance requested will lower the value of their homes as well as allow an illegal structure to remain. Testimony and photographs presented evidenced the general overdevelopment of the subject property and the close proximity of the deck to the rear property line.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

> whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and

3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28

After due consideration of the testimony and evidence presented, there is insufficient evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variance were denied. The testimony presented by Petitioners

was in support of a matter of preference rather than of the necessity for the variance. Further, the fact that the deck was completed after the issuance of a stop work order indicates the Petitioners' unwillingness to comply with building code and zoning regulations. A site visit by the Zoning Commissioner revealed that the subject property is overdeveloped, that the deck in question overcrowds the property causing a disproportionate intrusion on neighboring properties, and is in direct violation of the density concepts set forth in the D.R. zoning regulations. The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variance requested must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this day of September, 1989 that the Petition for Zoning Variance to permit an existing open projection (deck) with a rear yard setback of 6 feet in lieu of the required 15 feet, and to amend the Fourth Amended Final Development Plan of Brookhurst, Block B, Lot 24, to allow said deck to be constructed outside the building envelope, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that Petitioners remove the deck by no later than January 1, 1990.

> Zoning Commissioner for Baltimore County





PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section ... 1802.3.b., 301.1, 504 (V.B.5.b. CMDP) To permit an open projection [deck] with a rear yard setback of 6 ft. in lieu of the required. 15 ft. 4 to smend the 4th Amended Final Development Plan of Brookhurst Block B, Lot #24 to allow said deck construction outside of the building envelope. of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1) Strict compliance with requirement would unreasonably prevent the use

2) Granting this variance would do no injustice to other property owners in district and give substantial relief to Owner.

3) Public safety and welfare would be secure. 4) Said plat outline is peculiar with other properties in neighborhood. Property is to be posted and advertised as prescribed by Zoming Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition. Legal Owner(s): Contract Purchaser. William S. Gahs (Type of Print Name) Gail L. Flynn Gahs Gal L. Slynn Gals City and State Attorney for Petitioner: 4404 Fieldgreen Road Baltimore, MD 21236 (Type or Print Name) Name, address and phone number of legal owner, con-BALTIMORE COUNTY, MARYLAND en Road 529-2835 DEFICE OF FINANCE - REVENUE DIVISION IISCELLANEOUS CASH RECEIPT his petition be advertised, as if general circulation throughring be had before the Zoning ilding in Towson, Baltimore BCEU \*\*\*\* 3500:a 315.6

September 8, 1989

Mr. J. Robert Haines Zoning Commissioner of Baltimore County 111 W. Chesapeake Avenue Towson, Maryland 21204

> Re: Petition for Zoning Variance Case #90-91-A

Dear Mr. Haines,

This letter is in reference to the above petition to permit an open projection (deck) with a rear yard setback of 6 ft. in lieu of the required 15 ft. for Brookhurst, Block B, Lot 24. (4404 Fieldgreen Road)

We the residents of 9034 Fieldchat Road whose property abuts those of

4404 Fieldgreen Road request that this variance be depied due to the following 1. No other variance has been requested or approved regarding the setback

requirement in this developement. 2. The home at 4404 Fieldgreen Road without the deck is closer to the

setback than any other home in the development. 3. The footers at the farthest points from the house are only 2 inch cement slabs and were not done the same as the other footers which were dug to meet

4. Three stop work orders were issued as far as we know and work was continued until the deck was completed.

We also feel that because this deck is so close to the setback and it is the only one that is, it could decrease the value of not only our property but also the property at 9032 Fieldchat Road which is also affected by this

We request that the variance should be denied and the deck at 4404 Fieldgreen Road be brought within code.

Lathleen a. anexon Kathleen A. Lounsbury

BEGINNING BY A POINTONTHE EAST SIDE OF FIELDGREEN RD. 50 FUIDE AT A DISTANCE OF 420 + FT ALONG THE MA MORTH EAST RIGHT OF WAY LINE FROM THE CENTER LINE OF FIELDCHAT RD, 50 FTWIDE TO THE BEGINNING. OF LOT 24 IN THE SUBDIVISION OF BROOK HURST PLAT BOCK 54 FOLIO 147 IN THE 11TH E.D.





9034 Fieldchat Rd. Baltimore, Maryland 21236

CERTIFICATE OF POSTEMS

Dots. Posting Parties

Posted for Williams S. Falis a Law

Petition of property Els Relations Els. His Methode LES

Location of property Els Relations Els. His Methode LES

Location of Signer Telling In Market Els.

Location of Signer Telling In Market Els.

Location of Signer Telling In Market Els.

Remarks

Posted by Beginner

Bulliams Courty of the states of the st

PO 15176

reg M34124

22 90-91-A

price \$ 82.35

NORTHEAST TIMES BOOSTER and the

5. Zete Orlina

Hearing Date: Fildey,
Supt. 8, 1968 at 200 p.m.
Vertance: to permit an open
projection felecky with a rear yard
collect, of N-8, in-Seas at the re-

1. ROBERT HAMES

Baitimore County
Zoning Commission

Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner
August 2, 1989

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as

Petition for Zoning Variance

CASE NUMBER: 90-91-A

E side Fieldgreen Rd., 420° NE of c/l of Fieldchat Road

4404 Fieldgreen Road

11th Election District - 5th Councilmanic

Petitioner(s): William S. Gahs, et ux

HEARING SCHEDULED: FRIDAY, SEPTEMBER 8, 1989 at 2:00 p.m.

Variance: To permit an open projection (deck) with a rear yard setback of 6 ft. in lieu of the required 15 ft. and to amend the 4th Amended Final Development Plan of Brookhurst, Block B, Lot #24 to allow said deck construction outside the building envelope.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
ZONING COMMISSIONER
BALLIMORE COUNTY, MARYLAND

CC: Mr. & Mrs. Gahs
Joe DiPietro
File

MICROFILMED

BALTIMORE COUNTY BUILDING AND ZONING OFFICIALS WERE NOTIFIED BY THE HOMEOUNERS AT 9032 FIELDCHAT RD. BEFORE CONSTRUCTION BEGAN, BECAUSE OF THE PPEARANCE OF THE NON-CONFORMING LAYOUT OF THE DECK. AFTER CONSTRUCTION BEGAN, UNDER A PERMIT THAT DID NOT DEPICT THE ACTUAL LOCATION AND SIZE OF THE DECK, A STOP-WORK ORDER WAS ISSUED BY COUNTY OFFICIALS - REGARDLESS - CONSTRUCTION CONTINUED THEN A NEW PERMIT WAS OBTAINED, WHICH STILL DID NOT ACCURATELY DEPICT THE SIZE OF THE DECK. CONSTRUCTION CONTINUED AND THE INSPECTORS WERE AGAIN NOTIFIED. ANOTHER STOP WORK ORDER WAS ISSUED, YET THE CONSTRUCTION OF THE DECK CONTINUED AND IT WAS COMPLETED, UNDER VIOLATION OF THE STOP-WORK ORDER. WE FEEL THAT THIS WAS A BLATANT DISREGARD FOR THE RULES AND PROCEDURES GOVERNING CONSTRUCTION, THIS IS ESPECIALLY EVIDENT SINCE THE PORTION EXCEEDING REGULATIONS WAS NOT BEGUN UNTIL THE INSPECTOR HAD APPROVED THE ORIGINAL LEGAL FOOTERS. WE BELIEVE THIS WAS DONE TO HIDE THE TRUE PLANS AND TO GET AWAY WITH EXCEEDING ESTABLISHED ZONING LIMITS.

IT WAS NOT OUR ORIGINAL INTENTION TO CAUSE THE CONSTRUCTED DECK TO BE TORN DOWN, BUT RATHER TO BE BUILT WITHIN REGULATION, AND TO HAVE ANY DISCREPANCY RESO VED BEFORE CONSTRUCTION BEGAN. HOWEVER, THE CONSTRUCTION PROCEED WITHOUT ADHERANCE TO REGULATION AND WE ARE REQUESTING THAT THE PORTION OF THE DECK THAT EXCEEDS ESTABLISHED ZONING REGULATIONS BE REMOVED AS SOON AS POSSIBLE, WHAT GOOD ARE THE REGULATIONS IF CONSTRUCTION CAN CONTINUE WHEN IT IS CLEARLY IN VIOLATION. WHAT IS THE PURPOSE OF A STOP-WORK ORDER IF, WHEN ISSUED, IT CAN BE IGNORED BY THE PARTY ERECTING A STRUCTURE IN VIOLATION OF ZONING REGULATIONS, ANY VARIANCE REQUESTED SHOULD HAVE BEEN FILED BEFORE CONSTRUCTION BEGAN SO THAT OPPORTUNITY TO PROTEST COULD HAVE BEEN VOICED BEFORE THE DECK WAS BUILT. AS IT IS NOW, THE HOMEOWNERS WERE ABLE TO USE THE DECK MOST OF THE SUMMER. WHEN THEY SHOULD HAVE HAD TO WAIT FOR THE VARIANCE HEARING.

- DURING THE SUMMER OF 1988, STAKES WERE PLACED ON THE LOT BY A PROFESSIONAL DECK BUILDER. WHEN WE ASKED THE BUILDER IF HE WAS AWARE THAT THE PROPOSED SITE WOULD NOT MEET ESTABLISHED CODE, HE SAID HE WASN'T. HE THEN TOLD US THAT HE WAS GLAD HE DID FIND OUT BEFORE WORK WAS PERFORMED BECAUSE HE COULD HAVE BEEN EXPOSED TO NON-PAYMENT, FOR WORK DONE AGAINST COUNTY REGULATIONS. THAT BUILDER DID NOT PROCEED WITH CONSTRUCTION AND WAS NOT INVOLVED WITH THE DECK AS IT IS PRESENTLY CONSTRUCTED.

- IT IS DISCOMFORTING ENOUGH TO HAVE THE BACKS OF OUR HOUSES SO CLOSE SO THAT ANY NORMAL NOISE CAN BE HEARD BACK AND FORTH. THE ALLOWANCE OF THE VARIANCE COULD ONLY FURTHER ENHANCE THIS DISCOMFORT.

WE ARE REQUESTING PROMPT DENIAL OF THIS VARIANCE PETITION AND THE PROMPT REMOVAL OF THE EXCESS STRUCTURE. WE HAVE HAD TO LIVE WITH THIS DECK THAT WAS CONSTRUCTED IN VIOLATION OF ZONING REGULATION FOR MOST OF THE SUMMER AND FEEL WE ARE JUSTIFIED IN OUR REQUEST. THE DECK WAS DESIGNED TO EXIST AGAINST ESTABLISHED ZONING REGULATIONS AND CONSTRUCTED AGAINST DIRECT ORDER BY THE COUNTY INSPECTORS. THE VALUE OF OUR PROPERTY SHOULD NOT BE DECREASED BY THIS ILLEGAL STRUCTURE.

9 PROTESTANT'S
PROTESTANT'S
EXHIBIT 2 MICROFILMED

JIROBERT HAINES
ZONING COMMISSIONER
OFFICE OF PLANNING & ZONING
BALTIMORE COUNTY, MARYLAND

SUBJECT: REQUEST FOR DENIAL OF PETITION FOR ZONING VARIANCE

CASE NUMBER : 90-91-A ADDRESS : 4404 FIELDGREEN RD.

THIS STATEMENT IS PRESENTED AS A REQUEST FOR DENIAL OF A ZONING VARIANCE FOR CONSTRUCTION OF A DECK ON THE REAR YARD OF 4404 FIELDGREEN RD.

- OF ALL HOMES ON THE EAST SIDE OF FIELDGREEN RD, 4404 FIELDGREEN RD.

SITS CLOSEST, BY A SUBSTANTIAL AMOUNT, TO HOMES ON THE WEST SIDE

DENIAL IS REQUESTED FOR THE FOLLOWING REASONS:

OF FIELDCHAT RD. ALLOWANCE OF THE VARIANCE WOULD FURTHER ADD TO THE CLOSENESS OF THIS HOME BACKING UP TO FIELDCHAT RD. THE VISUAL PERCEPTION CLEARLY IDENTIFIES DISPROPORTIONATE LOCATION OF THE LUT COMPARED WITH ADJACENT LOTS.

THE HOME AT 9032 FIELDCHAT RD. BACKS, UP TO 4404 FIELDGREEN RD. THE PERCEPTION GAINED ON EXITING THE REAR OF 9032 FIELDCHAT RD.

IS THE OVERWHELMING PRESENCE OF THE HOME AT 4404 FIELDGREEN RD.
IF THE VARIANCE IS PERMITTED, THIS OVERWHELMING PRESENCE IS THEN
COMPOUNDED BY THE DECK BEING SO CLOSE TO THE PROPERTY LINE.
AS IT IS NOW, THE PLACEMENT OF THE HOUSE AT 4404 FIELDGREEN IS
AT THE EXTREME REAR ALLOWANCE OF THE LOT ACCORDING TO ZONING.
- AS HOMEOWNERS OF 9032 FIELDCHAT RD., WE FEEL OUR PROPERTY VALUE

AS HOMEOWNERS OF 9032 FIELDCHAT RD., WE FEEL OUR PROPERTY VALUE WOULD BE DIMINISHED IF BALTIMORE COUNTY RELAXED THE ZONING THAT WAS SET UP WHEN THE DEVELOPMENT WAS PLANNED. AS IT IS NOW, OUR HOME AT 9032 FIELDCHAT RD. SITS CLOSER TO 4404 FIELDGREEN RD. THAN ANY OTHER HOMES BACKING UP TO EACH OTHER ON FIELDCHAT AND FIELDGREEN. THE ALLOWANCE OF THE VARIANCE WOULD ONLY ADD TO THIS SITUATION.

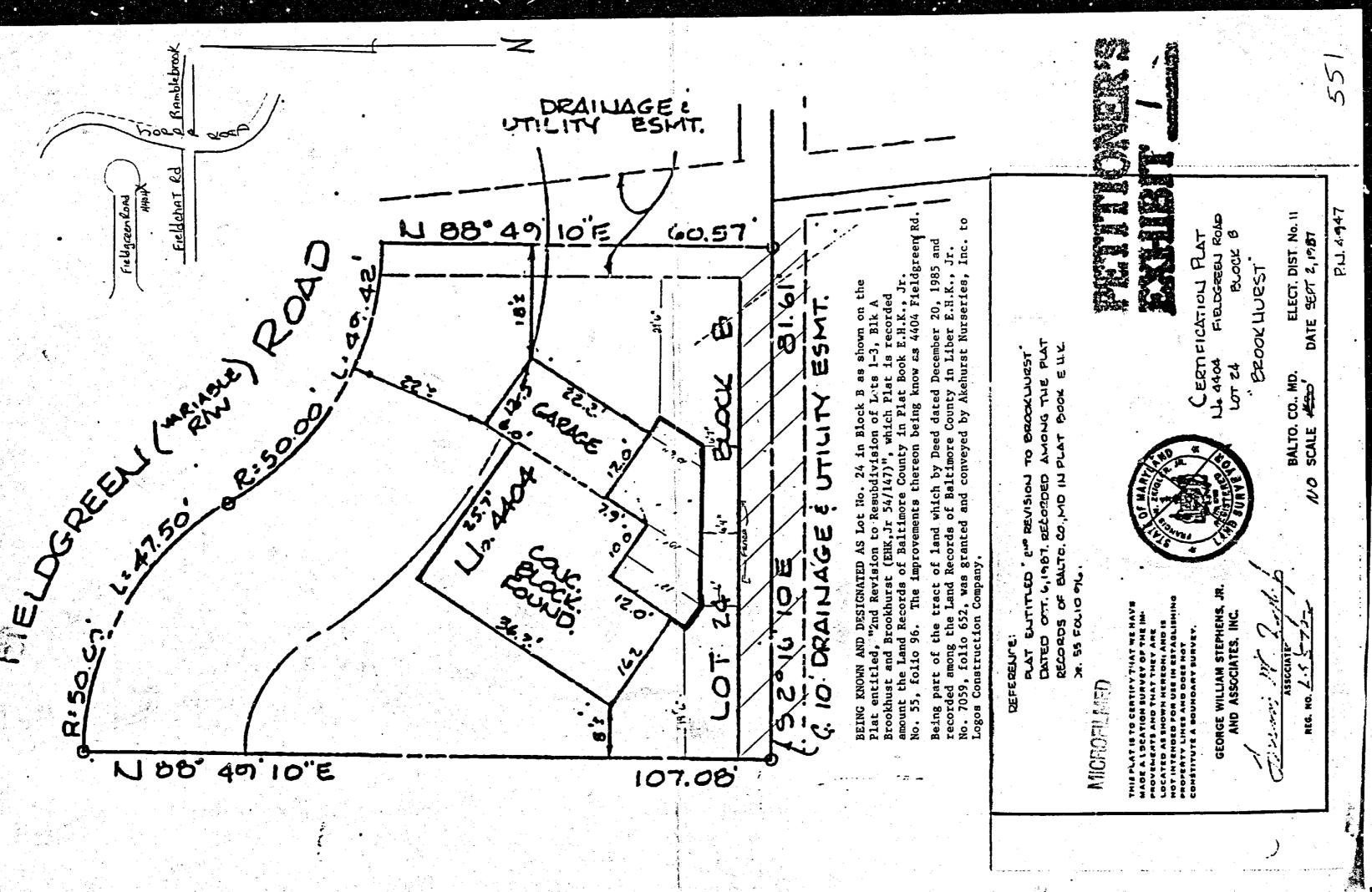
AND WE FEEL THAT THE

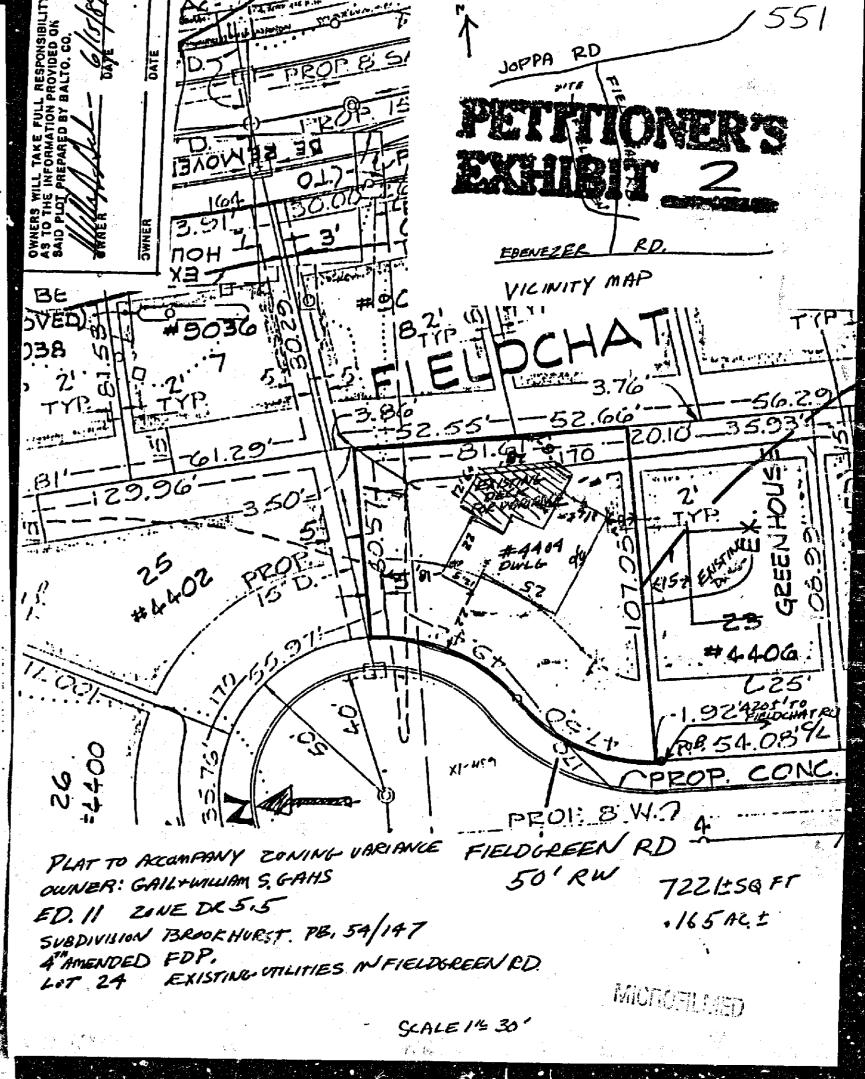
DEVALUATION OF PROPERTY CAUSED BY THE IMPOSING LOCATION OF THE CONSTRUCTED DECK IS A BURDEN WE SHOULD NOT HAVE TO BEAR. THE APPRECIATION OF OUR PROPERTY VALUE HAS DEFINITELY BEEN LIMITED BY THE APPEARANCE OF THIS DECK BARELY 5 FT. FROM THE PROPERTY LINE.

- UPON PURCHASE OF OUR HOME AT 9032 FIELDCHAT, NO LAYOUT OF THE CONSTRUCTION PLANNED ON FIELDCHAT WAS MADE AVAIABLE TO US. AFTER CONSTRUCTION BEGAN, WE REALIZED THAT OUR HOME WOULD BE CLOSER TO THE HOME ON FIELDGREEN THAN ANY OTHER ADJACENT HOMES. HOWEVER, WHEN THE HOME AT 4404 FIELDGREEN WAS PURCHASED, OUR HOME AND THE PROXIMITY TO PROPERTY LINES WAS CLEARLY ESTABLISHED. THEREFORE, ANY THOUGHTS TO ERECTING A DECK IN ITS PRESENT LOCATION SHOULD HAVE CONSIDERED THE LIMITED AREA IN WHICH IT COULD BE DONE. IF THIS WAS NOT ACCEPTABLE, EITHER THE PURCHASE SHOULD NOT HAVE PROCEEDED OR HOPES OF BUILDING A DECK SHOULD HAVE BEEN ABANDONDED OR THE DECK SHOULD HAVE BEEN BUILT IN A DIFFERENT LOCATION ON THE PROPERTY. INSTEAD, ZONING REGULATIONS WERE VIOLATED AND THE DECK

WAS BUILT ANYWAY, EVEN AFTER STOP-WORK OF DERS WERE TO STANTS

EXHIBIT 2 MICROFILMED





Dennis F. Rasmussen
County Executive CASE NUMBER: 9G-91-A E side Fieldgreen Rd., 420' NE of c/l of Fieldchat Road 4404 Fieldgreen Road 11th Election District - 5th Councilmanic Petitioner(s): William S. Gahs, et ux Please be advised that \$ 107.35 is due for advertising and posting of the above captioned property. THIS FEE MUST BE PAID AND THE ZONING SIGN & PUST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY Please make, your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) sinutes before your hearing is scheduled to begin. Be advised that should you fail to return the sign & post set(s), there will by an additional \$50.00 added to the above amount for each such set PALTIMORE COULTY, MARYLAND
OFFICE OF FINANCE REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT 107.35 MICROFLMED

Baltimore County Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405 Towson, Maryland 21204 (301) 887-3554

July 24, 1989

Mr. J. Robert Haines Zoning Commissioner County Office Building
Towson, MD 21204

ZONING OFFICE

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 525, 526, 527, 542, 543, 544, 545, 546, 547, 548, 549, 550, 552, 553, 554, 555, 557, 558 and 559.

Very truly yours,

Michael S. Flanigan

Traffic Engineer Associate II

MSF/lab

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

J. Robert Haines Zoning Commissioner DATE: August 16, 1989

FROM:

Pri Keller, Deputy Director Orrice of Planning and Zoning

William and Gail Gahs, Item 551 Zoning Petition No. 90-91-A SUBJECT:

The petitioners request a variance to permit a deck with a rear yard setback of 6 feet in lieu of the required 15 feet, and to amend the 4th Amended Development Plan.

The Office of Planning and Zoning has no comment on the above request.

PK/JL/sf

MICROFILMED

Baltimore County Fire Department 800 York Road Towson, Maryland 21204-2586 (301) 887-4500

Paul H. Reincke

JUNE 26, 1989

J. Robert Haines Zoning Commissioner Office of Planning and Zoning Baltimore County Office Building Towson, MD 21204



RE: Property Owner:

WILLIAM S. GAHS

Location:

E SIDE FIELD GREEN ROAD, 420' NE OF CENTERLINE OF FIELDCHAT ROAD

Item No.: 551

Zoning Agenda: JUNE 27, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

Planning Group Special Inspection Division

Fire Prevention Bureau

JK/KEK